

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BECKER

Employment
SEVENTH JUDICIAL DISTRICTMargaret Campbell,
Plaintiff,

Court File No. 03-CV-19-266

vs.

Honor the Earth,
Defendant.**DEFENDANT'S RESPONSE
TO PLAINTIFF'S MOTION
TO COMPEL DISCOVERY**

TO: Christy L. Hall of Gender Justice, 200 University Ave. W, Suite 200 St.
Paul, Minnesota 55103, and
Becker County Court Administrator.

COMES NOW Defendant Honor the Earth, by and through its attorney Frank Bibeau, to respectfully argue that this Becker County District Court has lost jurisdiction to decide Plaintiff's *motion to compel discovery*, to the Minnesota Court of Appeals, when Honor the Earth served and filed its *Notice of Appeal* dated August 5, 2019. Pursuant to Rule 115.04 Non-dispositive Motions, subd. (b) provides that the party responding to the motion [to compel shall] serve the following documents on all opposing counsel [. . .] and file the documents with the court administrator at least 7 days prior to the hearing: (1) Any memorandum of law the party intends to submit; and (2) Any relevant affidavits and exhibits. The hearing for the motion to compel discovery is/was scheduled for September 25, 2019, two weeks from now.

INTRODUCTION

Plaintiff suggests that she “*prioritized drafting discovery requests after* filing her complaint, serving them on Defendant on June 3, 2019.” (See *Memorandum in Support of Plaintiff’s Motion to Compel Discovery*, dated Aug. 15, 2019, (p. 1)(Emphasis added). However, the calendar shows that Plaintiff waited almost 5 months after filing her complaint, to serve her first set of discovery requests, June 3, 2019.

Plaintiff *pocket-served* her *Summons* and *Complaint* on January 22, 2019. Defendant promptly *Answered* and served a *Motion to Dismiss for Lack of Subject Matter Jurisdiction* on Feb. 7, 2019. The District Court held that motion hearing on May 8, 2019. At that motion hearing Defendant did inform the Court and Plaintiff that Defendant would file an appeal if the Court denied the jurisdictional motion to dismiss. (See Transcript, May 8, 2019, p. 10).

Nearly 5 months after serving her complaint, and a month after the motion hearing, and while the Court still had the jurisdictional challenge under advisement, Plaintiff served her first set of discovery requests June 3, 2019. Ultimately the court denied Defendant’s motion on July 2, 2019 and Defendant timely filed their *Notice of Appeal*, Aug. 5, 2019, (See A19-1232). Ten (10) days later Plaintiff filed their *Motion to Compel Discovery* Aug. 15, 2019, and gave notice of motion hearing in district court for Sept. 25, 2019.

Plaintiff cites to and relies upon Minn. R. Civ. App. P. 108.01, subd. 2., for their district court procedure argument in their *Memorandum in Support of Plaintiff's Motion to Compel Discovery*, dated Aug. 15, 2019, (p. 4) to; (1) support their motion to compel discovery and (2) argue for requirement by Defendant (as Appellant) to seek a district court *stay* saying that

Plaintiff suggested that Defendant obtain a hearing date and file another motion to stay discovery so that this question would be squarely before the [District] Court once again.

(See *Aff. of Christy L. Hall in Support of Plaintiff's Motion to Compel Discovery (Hall Aff.)* Ex. G, letter from Counsel for Plaintiff sent on August 2, 2019.).

Plaintiff argues that Rule 108 provides that

[f]iling a timely and proper appeal of a district court order suspends the district court's authority to make a further order that affects the appealed from order. Minn. R. Civ. App. P. 108.01, subd. 2. However, the district court continues to have jurisdiction of "matters independent of, supplemental to, or collateral to the order ... appealed from." *Id.*

The party desiring a stay while the appeal is pending must make a motion in the trial court. Minn. R. Civ. App. P. 108.02.

(See *Plaintiff's Memorandum in Support of Motion to Compel Discovery* at page 6). Plaintiff then argues that

[f]or an appeal taken from a district court order denying a motion to dismiss, the district court retains the ability to continue discovery, and the party wishing to stay discovery must make a motion in the district court. C.H. Robinson Worldwide, Inc. v. XPO Logistics, Inc., 2014 WL 12668519 (unpublished) (Minn. Ct. App. February 25, 2014). In C.H. Robinson Worldwide, Inc.,

the Minnesota Court of Appeals found that a district court did in fact abuse its discretion by denying a stay of discovery while the parties appealed a denial of a motion to dismiss for lack of personal jurisdiction. Id.

In that case, a party disputed personal jurisdiction, and the court of appeals strongly weighed the burden on the appellant to being forced to litigate in this state. *The court of appeals held that discovery could cause irreparable injury to appellants' rights to avoid defending litigation. Id.*

(Emphasis added). Plaintiff contrarily concludes and argues that

Here, weighing the interests of the parties supports the opposite result—denying a stay and allowing discovery to continue while the appeal is pending. *This Court, having reviewed the facts and the law, may judge for itself the likelihood of success of Defendant's appeal.*

(Plaintiff's *Memo* at 7)(Emphasis added).

Here, Plaintiff cites to a single, *unpublished C.H. Robinson* case asking for this District Court to decide the *opposite result* from the Minnesota Court of Appeals. The reason *C.H. Robinson* is a 2014 *unpublished* Appellate case, is because it relied on the Minn. Supreme Court decision *Hunt v. Nevada State Bank*, 285 Minn. 77, 88-89, 172 N.W.2d 292, 298 (1969), (order denying motion to dismiss for lack of personal jurisdiction immediately appealable of right). (See *Hall Aff. Ex. L unpublished C.H. Robinson*, single page order). Defendant's Counsel gave notice of *Hunt v. Nevada State Bank* to Plaintiff's Counsel by letter of July 31, 2019, explaining that Minn. Civ. R. Pro. 103.03 *comments* provided that an appeal may be allowed as a matter of right even

though the ground for that appeal is not found expressly in the provisions of Rule 103.03. (See *Hall Aff.* Ex. F).

The C.H. Robinson court *cited* Hunt directly and concluded

that the district court abused its discretion in denying appellants' motions to stay discovery. The right to immediately appeal the denial of a motion to dismiss for lack of personal jurisdiction stems from our supreme court's judgment that a defendant who is not subject to the jurisdiction of this state should not be "compelled ... to take up the burden of litigation in this state." Hunt v. Nevada State Bank, 285 Minn. 77, 89, 172 N.W.2d 292, 300 (Minn. 1969). *Allowing respondents to obtain discovery from appellants during the pendency of the appeal not only would defeat the purpose of allowing an immediate appeal, but would cause irreparable injury to appellants' asserted rights to avoid defending litigation in this state.*

(See *Hall Aff.* Ex. L, at p. 67, C.H. Robinson Worldwide, Inc. v. XPO Logistics, Inc., 2014 WL 12668519 (*unpublished*) (Minn. Ct. App. February 25, 2014)(Emphasis added)). Moreover, Plaintiff is asking for the District Court to re-decide, under the very order appealed for lack of subject matter jurisdiction at the Minnesota Court of Appeals, to "judge for itself the likelihood of success of Defendant's appeal." (See *Plaint. Memo* at 7).

Here, Appellant has exercised their right to immediately appeal the denial of a motion to dismiss for lack of subject matter jurisdiction. This District Court lost jurisdiction to re-decide, when Defendant served and filed its *notice of appeal* to the Minnesota Court of Appeals.

ARGUMENT

Plaintiff's attorney stated in her *Affidavit of Christy L. Hall in Support of Plaintiff's Motion to Compel Discovery* that

[t]he Minnesota Department of Human Rights (MDHR) issued its final finding in this matter on November 30, 2018. In its order, the MDHR noted that, "the investigation file reveals that respondent [Honor the Earth] was uncooperative throughout the investigation. It produced no witnesses or documentation in response to the charge or the subsequent information request, *and insisted that the department lacked jurisdiction over it.*"

(See *Hall Aff.* item 3)(*Emphasis added* as Defendant herein, Honor the Earth, continues to argue the State's lack of subject matter jurisdiction over this on reservation, tribal matter on appeal). Plaintiff omitted providing a copy of the Nov. 30, 2018, MDHR document as part of her 67 pages of exhibits.

Presumably, the Nov. 30, 2018, MDHR document was not provided because the Plaintiff does not want this Court or anyone to know that the MDHR Commissioner, Honorable Kevin Lindsey's *Order* of Nov. 30, 2018, dismissed the same charges asserted herein by Plaintiff Campbell.

Commissioner Lindsey's *Order* concluded *twice* that

Having duly considered the arguments made by [Campbell] the charging party in her appeal of the prior NO PROBABLE CAUSE determination made in the above-referenced charge, I hereby affirm the prior determination, pursuant to Minnesota Statutes, §363A.28, subd. 6(c).

(See *Aff. of Defendant's Counsel*, Exhibit A, *Order* of dismissal from Minnesota Department of Human Rights Commissioner Honorable Kevin

Lindsey dated Nov. 30, 2018, at top of page 1, opening paragraph.)(Emphasis in original). The MDHR Order further declared that

On August 17, 2018, the [MDHR . . .] completed its investigation in to the charging party's allegations of sexual discrimination and reprisal in the area of employment and issued a NO PROBABLE CAUSE determination.

(Id. Ex. A, Conclusion #1)(Emphasis in original).

In support of her *motion to compel discovery*, Plaintiff also provided a series of *correspondence between the attorneys* relating to discovery and Defendant's rights to appeal, but . . . not Plaintiff's *last attorney letter* between counsels, with regard to the pre-motion to compel series of letters. (See *Affidavit of Defendant's Counsel*, Exhibit B, letter from Christy L. Hall, dated Aug. 14, 2019, threatening possibility of \$35,000.00 in attorney fees for 100 hours of discovery work so far). Plaintiff filed their *first set* of discovery requests on June 3, 2019, less than a month after the May 8, 2019, motion hearing, during the 90 day statutory time the district court has to decide.

Plaintiff mentions, but fails to analyze the Minnesota Rules of Civil Procedure, Rule 26 simply declaring that "the state court rules contain additional explicit restrictions on the scope and number of discovery requests. See Minn. R. Civ. P. 26.02." (See *Memo* pp. 5-6). Very important to note and consider is that Rule 26 provides for exemptions to disclosure under 26.01

a Duty To Disclose . . . (1) In General. Except as exempted by Rule 26.01(a)(2) . . . *Proceedings Exempt from Disclosure*. Unless

otherwise ordered by the court in an action, the following proceedings are exempt from disclosures under Rule 26.01(a), (b), and (c):

(F) *a proceeding ancillary to a proceeding in another court;*

(See Rule 26.01(a)(2)(F))(Emphasis added). Here, Rule 26 *exempts*

Defendant's duty to disclose with regard to this district court proceeding, which is now an ancillary proceeding to the now primary proceedings in the Minnesota Court of Appeals (A19-1232) challenging this Court's subject matter jurisdiction determination.

Plaintiff argues that *the party desiring a stay* while the appeal is pending must make a motion in the trial court. Minn. R. Civ. App. P. 108.02. The Rule does make such statements with regard to: (a) a stay of enforcement of the order, or (b) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending pursuant to Minn. R. Civ. P. 62.02. However, there are no decided issues to enforce in the *Order*. The only order issued by the District Court, was July 2, 2019, and that *Order* only deals with *Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction* dated Feb. 7, 2019. The July 2, 2019, District Court jurisdictional *Order* is completely and properly under appeal. (See *Notice of Appeal* filed with Becker Court Admin. Aug. 5, 2019, (A19-1232)).

Consequently, Defendant agrees with Plaintiff's citation to the Rules that "filing a timely and proper appeal of a district court order suspends the district

court's authority to make a further order that affects the appealed from order. Minn. R. Civ. App. P. 108.01, subd. 2." (See Plaintiff's Memo, at 6). As such, Plaintiff's *post-notice of appeal* motion for a district court order to compel discovery *now*, is a frivolous attempt for a *further* order, unfairly deriving its authority from *the appealed from order* where Defendant is challenging the district court's authority to exercise jurisdiction to decide.

Additionally, Plaintiff's only case *cited*, C.H. Robinson Worldwide, Inc., held

allowing respondents to obtain discovery from appellants during the pendency of the appeal not only would defeat the purpose of allowing an immediate appeal, *but would cause irreparable injury to appellants' asserted rights to avoid defending litigation in this state.*

(See Plaintiff's Memo at 7 and *Hall Aff.* Ex. L, the reason C.H. Robinson was *unpublished* is because it follows the holding by the Supreme Court decision in Hunt)(Emphasis added).

Therefore, requesting a *stay* from the district court for an order presently under appeal appears unnecessary, a redundant waste of judicial resources and moreover, counter-intuitive for a lack of subject matter jurisdictional authority challenge, where Defendant's immediate appeal seeks to avoid the same *irreparable injury to appellants' rights to avoid defending litigation in State District Court.*

ADDED LEGAL HARDSHIPS

Plaintiff waited 6 months after serving *summons* and *complaint* to serve first set of discovery requests and served their motion to compel discovery well after Defendant served and filed its *Notice of Appeal*. Plaintiff provides an *unpublished C.H. Robinson Worldwide, Inc.* Appellate Court decision that holds “allowing respondents to obtain discovery from appellants during the pendency of the appeal not only would defeat the purpose of allowing an immediate appeal, *but would cause irreparable injury to appellants' asserted rights to avoid defending litigation in this state.*” Defendant filed an immediate appeal and agrees whole heartedly with the *unpublished C.H. Robinson* opinion and Hunt.

Plaintiff has filed this frivolous motion to compel discovery to add further legal costs and hardships to Defendant who has immediately appealed jurisdiction. The timing conflict is very important here, because the *transcript* for the May 8, 2019 motion hearing was served and filed on the Court of Appeals on Aug. 27, 2019, making Appellant Honor the Earth’s initial brief due on or about September 27, 2019.

The motion hearing for Plaintiff’s present motion to compel discovery is Sept. 25, 2019, resulting in additional days of lost appeal brief time for this very case, to instead prepare this *Response* and to travel to Detroit Lakes.

CONCLUSION

Based on the record, the Rules of Civil Procedure, existing case law, and because an immediate appeal has been timely filed by Defendant challenging subject matter jurisdiction (A19-1232), the District Court must deny Plaintiff's motion to compel discovery.

Respectfully submitted,

Dated: September 10, 2019

/s/ Frank Bibeau
Frank Bibeau (Mn# 306460)